Supreme Court, U.S.
FILED
JAN 31 1990
JOSEPH F. SPANIOL, JR.
CLERK

(3)

No. 89-988

IN THE
Supreme Court of the United States
OCTOBER TERM, 1989

CHEVRON CORPORATION, *et al.*,
Petitioners,

v.

THE CITY OF LONG BEACH, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

PETITIONERS' REPLY BRIEF

CARTER B. SIMPSON
CHARLES F. RICE
MOBIL OIL CORPORATION
150 East 42nd Street
New York, New York 10017
(212) 883-4387

E. BARRETT PRETTYMAN, JR.*
ANDREW J. KILCARR
MAUREEN O'BRYON
HOGAN & HARTSON
Columbia Square
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5600

Counsel for Petitioner Mobil Oil Corporation

* Counsel of Record

[Additional Counsel Listed on Inside Cover]

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

TABLE OF AUTHORITIES

Cases: Page

Brine v. *Paine Webber, Jackson & Curtis, Inc.*, 745 F.2d 100 (1st Cir. 1984) 5

Caterpillar v. *Williams*, 482 U.S. 386 (1987) 2, 3

Deauville Associates v. *Lojoy Corp.*, 181 F.2d 5 (5th Cir.), *cert. denied*, 340 U.S. 905 (1950) 5

Federated Department Stores, Inc. v. *Moitie*, 452 U.S. 394 (1981) 4, 5

Franchise Tax Board v. *Construction Laborers Vacation Trust*, 463 U.S. 1 (1983) 3

Luben Industries, Inc. v. *United States*, 707 F.2d 1037 (9th Cir. 1983) 4

Lummus Co. v. *Commonwealth Oil Refining Co.*, 297 F.2d 80 (2d Cir. 1961), *cert. denied*, 368 U.S. 986 (1962) 4

Metropolitan Life Ins. Co. v. *Taylor*, 481 U.S. 58 (1987) 3

Oklahoma Tax Comm'n v. *Graham*, 103 L.Ed. 2d 924 (1989) 2

Salveson v. *Western States Bankcard Ass'n*, 731 F.2d 1423 (9th Cir. 1984) 5

Villarreal v. *Brown Express, Inc.*, 529 F.2d 1219 (5th Cir. 1976) 5

Other Authorities:

18 C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* § 4416 (1981 & Supp. 1988) .. 5

Restatement (Second) of Judgments § 13 comment g (1982) 4

Restatement (Second) of Judgments § 27 Comment a (1982) 5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

No. 89-988

CHEVRON CORPORATION, *et al.*,
Petitioners,

v.

THE CITY OF LONG BEACH, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

PETITIONERS' REPLY BRIEF

Respondents have *nothing* to say about the issue in this case: whether a federal court's acceptance of removal jurisdiction may be reversed on the ground that it was rendered improper by the occurrence of a subsequent event. In fact, respondents do not even mention, much less discuss, the cases from this Court that support petitioners on this removal question. Instead, respondents argue issues on which the Court of Appeals did not base its decision. Even in doing so, however, they demonstrate why certiorari should be granted.

Respondents posit this case as if the suit they began in state court as *Long Beach II* was the beginning of a new lawsuit, separate and independent from the one they had previously filed in federal court in *Long Beach I*.

But that is not what the District Court held, nor did the Court of Appeals. The District Court correctly found that *Long Beach II* was merely an effort to re-adjudicate in state court an interpretation of a contract that the District Court had already adjudicated in federal court as part of its pendant jurisdiction. The Court of Appeals did not overrule or even dispute that holding. It held only that, because the District Court was wrong on the antitrust claims in *Long Beach I*, *Long Beach II* automatically had to be remanded back to *state* court for trial.

Respondents' argument comes down to this: When plaintiffs choose to sue in federal court on both federal and pendant state claims, and the federal court decides the state claims on their merits, the plaintiffs are then free to bypass that ruling by filing the same claims again in state court. The federal court on removal, under this theory, would have no power to protect its federal jurisdiction by taking the case and preventing the plaintiffs from re-adjudicating those claims.

Nothing in this Court's previous rulings makes this the law. Such a result would have such serious consequences for federal court jurisdiction, and such an overriding impact on the integrity of the federal system, that if it is to be the law, this Court should say so. That ruling would constitute an open invitation to plaintiffs everywhere to relitigate in state court each and every claim they had lost previously in federal court.

Respondents rely on such cases as *Caterpillar* v. *Williams*, 482 U.S. 386 (1987). But that case and the others cited each involved lawsuits brought initially in *state*, not federal, court and raising issues under the *preemption* branch of the artful pleading doctrine.[1] That branch

---

[1] *Oklahoma Tax Comm'n* v. *Graham*, 103 L.Ed. 2d 924 (1989), simply followed *Caterpillar*. There too the plaintiff sued in state court on a purely state claim and defendants were not allowed to

of the doctrine is not in issue here. In *Caterpillar*, for example, the plaintiffs chose, in the first instance, *state* court, pleading only state claims. They wanted those state claims decided in state court, and this Court ruled that, except where state law has been completely pre-empted [2], they were entitled to the forum of their choice. In that circumstance, even an anticipated federal defense could not defeat the "well-pleaded complaint" rule.

Here, the whole point is that plaintiffs initially selected *federal* court to bring their suit. The "well-pleaded complaint" that they chose to file alleged both federal and state claims. The federal court thus properly acquired jurisdiction. It ruled. It was only after plaintiffs found the ruling not to their advantage that they sought, for the first time, and then for a second time, to have a state court rule to the contrary.

Thus, even under respondents' analysis, the question would become whether plaintiffs are entitled to defeat federal jurisdiction in this matter or whether the federal court has authority to protect its judgments by accepting removal of subsequent cases challenging those judgments.[3]

---

remove on the basis of a federal defense. In *Franchise Tax Board* v. *Construction Laborers Vacation Trust*, 463 U.S. 1 (1983), the suit again was filed in state court. The first count was not removable because it was a state claim, and the second was not removable because original federal jurisdiction over the claim would have been barred. Finally, *Metropolitan Life Ins. Co.* v. *Taylor*, 481 U.S. 58 (1987), did allow removal to the federal court because the claims filed in state court, although purporting to rely entirely on state law, were pre-empted by federal law. None of these cases touches the issue here.

[2] The Court pointed out that, if the state claim had been completely pre-empted by federal law, removal was proper.

[3] Respondents also seem to imply that they could relitigate their contract claim in state court because the same claim already litigated in federal court was not "final" at the time they filed in state court. Opp. p. 3. But the law is to the contrary. A ruling is final

Perhaps understanding that this court has not decided this important issue—even though cases like *Federated Department Stores, Inc.* v. *Moitie*, 452 U.S. 394 (1981), chart the course for the proper result—respondents say a number of times that the federal court "never" had jurisdiction over this case. But that statement directly contradicts what occurred in the courts below. Respondents' own complaint in *Long Beach I* invoked the federal court's jurisdiction. Far from disputing that jurisdiction, respondents asserted it and defended it and, as held below, *Long Beach II* was merely an attempt to relitigate *Long Beach I*.

Respondents also argue several times that petitioners "erroneously" persuaded the District Court in *Long Beach II* to accept removal. *E.g.*, Opp. pp. 8, 14. But here they are going beyond what both the District Court and the Court of Appeals held. The Court of Appeals' theory was not that the District Court erred in accepting removal, but rather that it erred in its antitrust rulings in *Long Beach I* and that *therefore* this subsequent event—a reversal of related substantive claims—required reversal as to removal as well.

Respondents also argue that *Long Beach I* and *II* were "different". But again that is not what the District Court held, and the Court of Appeals did not rest its decision on any such conclusion. The different time periods, for example, were relevant only to the antitrust claims; the question of how the underlying contract

---

and precludes relitigation if it is " 'sufficiently firm' to be accorded preclusive effect"—that is, if it was fully litigated, resulting in a reasoned opinion. *Luben Industries, Inc.* v. *United States*, 707 F.2d 1037, 1040 (9th Cir. 1983); *see also Lummus Co.* v. *Commonwealth Oil Refining Co.*, 297 F.2d 80, 89 (2d Cir. 1961), *cert. denied*, 368 U.S. 986 (1962); *Restatement (Second) of Judgments* § 13 comment g (1982). That was clearly the case here. The claim was fully litigated by June of 1979 and then certified for an appeal that plaintiffs declined to take. The Court of Appeals found the matter

should be interpreted was the same for whatever period was involved, since an interpretation of the rights of parties binds those parties throughout the life of the contract and in future litigation.[4] The District Court held that respondents had "initially raised such [contract] issue in this court and lost" and that they were therefore collaterally estopped from "trying again in a different tribunal." App. 83a. The restraint against relitigation was just as final as that in *Moitie*. The Court of Appeals did not disagree, but instead ruled that its own subsequent reversal of *Long Beach I* removed any basis for federal court jurisdiction, App. 26a—the "subsequent event" theory that we challenge in our petition.

The question presented by this case which respondents fail to address is one that warrants a hearing by the Court. Revisiting removal decisions in the light of subsequent events would be a never-ending process and one wholly destructive of both judicial economy and the carefully-preserved balance between state and federal courts. But even if the case is recast in the mold asserted by respondents, the significance of the ruling below is so great that certiorari is warranted.[5]

---

to have been final in the proper sense; plaintiffs misstate the panel's observations in order to label the panel's view on this point as "mistaken." *Compare* opp. p. 3 n.3 with App. 22a, 25a n.6.

[4] *See, e.g., Brine* v. *Paine Webber, Jackson & Curtis, Inc.*, 745 F.2d 100, 103-104 (1st Cir. 1984); *Restatement (Second) of Judgments* § 27 comment a (1982); 18 C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* § 4416 at 140 (1981 & Supp. 1988). The contract construed in *Long Beach I* is a 35-year agreement effective since March of 1965.

[5] *See, e.g., Salveson* v. *Western States Bankcard Ass'n*, 731 F.2d 1423, 1429 (9th Cir. 1984); *Villarreal* v. *Brown Express, Inc.*, 529 F.2d 1219, 1221-22 (5th Cir. 1976); *Deauville Associates* v. *Lojoy Corp.*, 181 F.2d 5, 6 (5th Cir.), *cert. denied*, 340 U.S. 905 (1950).

CONCLUSION

For the foregoing reasons and those stated in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

DARRYL SNIDER
BROBECK, PHLEGER & HARRISON
444 South Flower Street
Suite 4300
Los Angeles, CA 90017
(213) 489-4060

RONALD L. OLSON
CAROLYN B. KUHL
JOHN W. SPIEGEL
MUNGER, TOLLES & OLSON
355 S. Grand Avenue
35th Floor
Los Angeles, CA 90071
(213) 683-9100

HAROLD E. ZAHNER
MARY A. HACKETT
UNION OIL COMPANY OF CALIFORNIA
Union Oil Center
P.O. Box 7600
Los Angeles, CA 90051
(213) 977-6404

Counsel for Petitioner Union Oil Company of California

E. BARRETT PRETTYMAN, JR.*
ANDREW J. KILCARR
MAUREEN O'BRYON
HOGAN & HARTSON
Columbia Square
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5600

CARTER B. SIMPSON
CHARLES F. RICE
MOBIL OIL CORPORATION
150 East 42nd Street
New York, New York 10017
(212) 883-4387

Counsel for Petitioner Mobil Oil Corporation

* Counsel of Record

ANTHONY P. BROWN
PHILIP L. JUDSON
PILLSBURY, MADISON & SUTRO
P.O. Box 7880
225 Bush Street
San Francisco, CA 94120
(415) 983-1000
Counsel for Petitioner
Chevron Corporation

JOHN S. KINGDON
ALAN M. GRIMALDI
HOWREY & SIMON
1730 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 783-0800

RAYMOND V. MCCORD
SHELL OIL COMPANY
10 Universal City Plaza
Suite 1850
University City, CA 91608
(818) 753-2538
Counsel for Petitioner
Shell Oil Company

PHILIP K. VERLEGER
HOWARD J. PRIVETT
DAVID A. DESTINO
MCCUTCHEN, BLACK,
VERLEGER & SHEA
600 Wilshire Blvd.
Los Angeles, CA 90017
(213) 624-2400

KENNETH P. FOUNTAIN
EXXON CORPORATION
P.O. Box 2180
1861 Exxon Building
Houston, Texas 77001
(713) 656-5621
Counsel for Petitioner
Exxon Corporation

ROBERT D. WILSON
TEXACO INC.
2000 Westchester Avenue
White Plains, New York 10650
(914) 253-7910

LESLIE C. RANDALL
TEXACO INC.
10 Universal City Plaza
Suite 1300
Universal City, CA 91608
(818) 505-3025

MILTON J. SCHUBIN
BARRY WILLNER
ATON ARBISSER
KAYE, SCHOLER, FIERMAN,
HAYS & HANDLER
425 Park Avenue
New York, New York 10022
(212) 836-8000
Counsel for Petitioner
Texaco Inc.